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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 EUGENE ROBERT CATE,

12 Petitioner,

2:99-cv-1466-GEB-JFM-HC

13 vs.

14 ROBERT L. AYERS, et al.,

15 Respondents.

ORDER

16 _____/
17 Petitioner, a state prisoner proceeding through counsel, has timely filed a notice of
18 appeal of this court's November 18, 2008 denial of his application for a writ of habeas corpus
19 together with a request for a certificate of appealability pursuant to 28 U.S.C. § 2253(c).

20 A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the
21 applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.
22 § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues
23 satisfy the required showing or must state the reasons why such a certificate should not issue.
24 Fed. R. App. P. 22(b).

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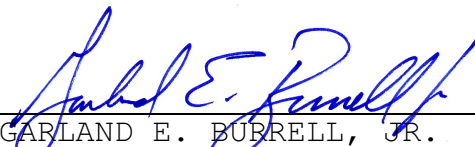
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1 For the reasons set forth in the magistrate judge's September 26, 2008 findings
2 and recommendations, petitioner has not made a substantial showing of the denial of a
3 constitutional right. Accordingly, IT IS HEREBY ORDERED that:

4 1. Petitioner's December 18, 2008 request for a certificate of appealability is
5 denied; and

6 2. The Clerk of the Court is directed to process petitioner's appeal to the United
7 States Court of Appeals for the Ninth Circuit.

8 Dated: January 20, 2009

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11 GARLAND E. BURRELL, JR.
United States District Judge
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